

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

In re:	*	CHAPTER 7
	*	
YANA POGUE	*	Case No. 04-91695-BEM
	*	
Debtor.	*	JUDGE BARBARA ELLIS-MONRO
	*	

**MOTION TO DISMISS**

COMES NOW Edwin K. Palmer, Chapter 7 Trustee in the above noted case ("Movant"), and moves the Court to dismiss this case for cause pursuant to Bankruptcy Code section 707(a). In support of his motion, Movant shows as follows:

1.

On March 1, 2004, a male claiming to be Yana Pogue (the "alleged Debtor") commenced this case by filing a petition, pro se, seeking relief under Chapter 7 of the United States Bankruptcy Code (Doc. No. 1).

2.

Alleged Debtor's original 341 Hearing was scheduled for March 31, 2004. Alleged Debtor did not appear. The Hearing was reset for April 14, 2004. Alleged Debtor did not appear. Movant had received a telephone message from alleged Debtor providing a reason for his non-appearance and requesting an additional re-set Hearing. The 341 Hearing was re-set for May 3, 2004.

3.

On or about April 26, 2004, alleged Debtor appeared at the office of Movant and provided payment in the amount of \$8,000.00, at which time Movant opened an Estate bank account and deposited the funds.

4.

Alleged Debtor appeared at Movant's office on several subsequent occasions, without appointment, seeking reimbursement of the payment for a variety of reasons.

5.

Alleged Debtor did not appear at the subsequent 341 re-set Hearings scheduled for May 3, 2004, May 24, 2004, and June 8, 2004.

6.

A Motion to Compel Debtor to File Papers, Appear for Meeting was filed by the Office of the U.S. Trustee on or about June 10, 2004. An Order granting said Motion was entered by the Court on June 18, 2004. The 341 Hearing was re-set pursuant to the Order for July 7, 2004, at 3:00 p.m. Alleged Debtor did not appear at said Hearing.

7.

On July 5, 2004, a Notice of Appearance was filed by Milton D. Jones, Attorney, on behalf of alleged Debtor, with a Motion to Convert the Chapter 7 case to a Chapter 13 case, amended Schedules and a Chapter 13 plan being filed on the same date.

8.

On July 29, 2004, alleged Debtor withdrew the request for conversion to Chapter 13.

9.

On August 8, 2004, alleged Debtor filed a Motion for Release of Property Not Part of the Estate with a Consent Order entered on September 1, 2004, granting alleged Debtor's request. On September 7, 2004, alleged Debtor filed a Motion to Dismiss the case.

10.

On September 10, 2004, having received new and pertinent information from Debtor's attorney with regard to alleged Debtor, Movant filed a Motion to Reconsider the Court Order entered on September 1, 2004. On October 1, 2004, the Office of the U.S. Trustee filed an objection to alleged Debtor's Motion to Dismiss the case. A consolidated Hearing on Movant's Motion and the U.S. Trustee's Motion was scheduled for October 6, 2004.

11.

On October 20, 2004, the Court entered an Order denying alleged Debtor's request to voluntarily dismiss the case and granting Movant's Motion to Reconsider and vacating the previous Order of September 1, 2004.

12.

An investigation of alleged Debtor's status was undertaken by the Office of the United States Trustee.

13.

In May of 2007, Movant received a copy of a letter directed to the Office of the United States Trustee from Yana Pogue ("Pogue"), a female, who claimed that the bankruptcy was filed fraudulently by her previous live-in boyfriend, Daniel Page ("Page"). Pogue advised that as a result, Page had been convicted in DeKalb County Superior Court of identity theft and forgery.

14.

Movant believes the following facts constitute grounds for a dismissal and for deposit of monies received by Trustee with the Clerk of Court:

1. The original filing was commenced by Daniel Page and was done without Yana Pogue's knowledge;

2. According to information received from Yana Pogue, Daniel Page, the original filer, was convicted in DeKalb County, Georgia, of identity theft and forgery.
3. As set out in Paragraph 3 above, all monies paid into the estate were made by direct payment to the Trustee. The direct payment was made by alleged Debtor, who, upon information and belief, appears to be Daniel Page. Mr. Page's whereabouts are now unknown to the Trustee. Trustee believes that the correct disposition of the funds should be by way of deposit with the Clerk of Court, United States Bankruptcy Court.

WHEREFORE, Movant respectfully requests that

1. the Court dismiss this case for cause; and
2. the Court authorize payment to the Clerk of Court, United States Bankruptcy Court, of the \$8,000.00 held in the Estate account.

Respectfully submitted this 26<sup>th</sup> day of August, 2013.

/s/ Edwin K. Palmer  
Edwin K. Palmer, P.C.  
Attorney for the Chapter 7 Trustee  
GA Bar No. 560100

Edwin K. Palmer, P.C.  
P.O. Box 1284  
Decatur, GA 30031  
(404) 479-4450

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA GEORGIA**

In re:	*	CHAPTER 7
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YANA POGUE	*	Case No. 04-91695-BEM
	*	
Debtor.	*	JUDGE BARBARA ELLIS-MONRO
	*	

**NOTICE OF HEARING**

**PLEASE TAKE NOTICE** that Edwin K. Palmer, Trustee in the above-noted bankruptcy case, has filed a **Motion to Dismiss** ("Motion") with the Court.

**PLEASE TAKE FURTHER NOTICE** that the Court will hold a hearing on the Motion in **Courtroom 1402, United States Courthouse, 75 Spring Street, S.W., Atlanta, Georgia, at 10:00 a.m. on Wednesday, September 25, 2013.**

Your rights may be affected by the Court's ruling on these pleadings. You should read these pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the Court to grant the relief sought in these pleadings or if you want the Court to consider your views, then you and/or your attorney must attend the Hearing. You may also file a written response to the pleading with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk at least two business days before the Hearing. The address of the Clerk's Office is Clerk, U.S. Bankruptcy Court, Suite 1340, 75 Spring Street, Atlanta, Georgia 30303. You must also mail a copy of your response to the undersigned at the address stated below.

Dated: August 26, 2013.

/s/Edwin K. Palmer

Edwin K. Palmer  
P.O. Box 1284  
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(404) 479-4450

Attorney for the Chapter 7 Trustee  
GA Bar No. 560100

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA GEORGIA

In re:	*	CHAPTER 7
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YANA POGUE	*	Case No. 04-91695-BEM
	*	
Debtor.	*	JUDGE BARBARA ELLIS-MONRO
	*	

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served all interested parties in the foregoing matter with a copy of the **Motion to Dismiss** and **Notice of Hearing**, by depositing in the United States mail a copy of same in a properly addressed envelope with sufficient postage affixed thereon, addressed as shown on the attached Distribution List.

This 26<sup>th</sup> day of August, 2013.

/s/ Edwin K. Palmer  
Edwin K. Palmer  
Attorney for the Chapter 7 Trustee  
GA Bar No. 560100

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